

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Hakim Abdulah Rashid,)	Civil Action No.: 4:13-cv-01298-RBH
)	Criminal No.: 4:10-cr-00941-RBH-1
Petitioner,)	
)	
v.)	ORDER
)	
United States of America,)	
)	
Respondent.)	
_____)	

Pending before the Court is Hakim Abdulah Rashid's ("Petitioner's") *pro se* Motion to Vacate, Set Aside, or Correct Sentence ("Motion to Vacate") pursuant to 28 U.S.C. § 2255, and his Motion to Proceed *In Forma Pauperis*. This Court sentenced Petitioner on June 6, 2012, and on that same day, he filed a notice of appeal that is currently pending.

Because his direct appeal is still pending, the Court lacks jurisdiction to consider Petitioner's Motion to Vacate. *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) (finding that filing a notice of appeal "confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal."), superseded on other grounds by, Fed. R. App. P. 4(a)(4). As such, Petitioner's collateral attack of her conviction and sentence under 28 U.S.C. § 2255 is premature. *See Pratt v. United States*, 129 F.3d 54, 60–61 (1st Cir. 1997).

IT IS THEREFORE ORDERED Petitioner's Motion to Vacate is **DISMISSED** *without prejudice*, and Petitioner's Motion to Proceed *In Forma Pauperis* is **DENIED** *without prejudice*.

IT IS SO ORDERED.

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

Florence, South Carolina
May 14, 2013